No. 98-404 (11)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,

Appellants,

v.

UNITED STATES HOUSE OF REPRESENTATIVES, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF OF *AMICI CURIAE* AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES; STATE LEGISLATIVE POLICY INSTITUTE; NOW LEGAL DEFENSE AND EDUCATION FUND; AMERICANS FOR DEMOCRATIC ACTION; AND NATIONAL COUNCIL OF LA RAZA, IN SUPPORT OF APPELLANTS

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QUESTIONS PRESENTED

1. Whether the instant case, which involves a suit filed by the United States House of Representatives challenging the Secretary of Commerce's current plan for the year 2000 census, presents a justiciable controversy satisfying the requirements of Article III of the Constitution.

2. Whether the Census Act, 13 U.S.C. § 1 *et seq.* (1994 & Supp. II 1996), prohibits the Secretary from employing statistical sampling in determining the population for the purpose of apportioning Representatives among the States.

3. Whether the Census Clause of the Constitution, Article I, Section 2, Clause 3, which requires Congress to conduct an "actual Enumeration" of the population, prohibits the use of statistical sampling in determining the population for the purpose of apportioning Representatives among the States.

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INTERESTS OF THE *AMICI CURIAE* [1]

The American Federation of State, County and Municipal Employees (AFSCME) is the largest union of public employees in the country, with approximately 1.3 million members employed in state and local governments throughout the nation. As employees of state and local governments, AFSCME's members have a strong interest in the production and use of accurate census data.

The State Legislative Policy Institute is a non-profit research, education, and advocacy organization of state legislators, labor unions, and other groups focusing on state and federal policies, information, and analysis. State legislators of course have a prime responsibility in redistricting at both the congressional and state level. The Institute thus has an interest in a fair and accurate Census 2000.

The NOW Legal Defense and Education Fund (NOW LDEF), founded in 1970 by leaders of the National Organization for Women, is a leading national non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and to secure equal rights. NOW LDEF believes that an accurate census is crucial to equal political representation for all women, including black and Hispanic women who in the past have been disproportionally undercounted. In addition, an accurate census will permit the equitable distribution of resources for federal programs designed to reach women and children.

Americans for Democratic Action (ADA), founded in 1947, is the nation's oldest independent liberal advocacy group. Throughout its history, ADA has been concerned about the participation and representation of minorities in the American political process and demographic calculations as a necessary

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[1] Letters indicating the parties' consent to the filing of this brief have been filed with the Clerk of the Court. This brief has not been authored in whole or in part by counsel for a party. No person, other than *amici*, their members, or their counsel, has made a monetary contribution to the preparation or submission of this brief.

basis for sound policy planning by federal, state and local governments.

The National Council of La Raza (NCLR) is the nation's principal constituency-based Hispanic organization, serving all Hispanic subgroups in all regions of the country through a network of over 225 affiliate organizations. As a disproportionately poor and traditionally undercounted population, Hispanics have a great stake in the debate over how the census counts the U.S. population. As Hispanics make up an increasingly large proportion of the nation's workers, taxpayers, voters, and school children, accurate census data is essential to ensure they receive their fair share of representation in Congress, as well as equitable levels of public resources.

STATEMENT OF THE CASE

1. The question presented is whether the Bureau of the Census may, consistent with two centuries of historical tradition, use the best available scientific methods to correct for inaccuracies and omissions in collected data as it prepares its "enumeration" of the nation's population for purposes of apportioning the seats in the House of Representatives among the several States. Appellee, the United States House of Representatives ("appellee" or "the House"), would have this Court require that the quarter-billion residents of our highly-mobile and complex society be counted without the use of statistical and other non-counting methods to correct for inaccuracies or omissions in collected data. But such methods have been routinely used in the conduct of every modern census. If accepted, the House's argument therefore would work a dramatic change in the law, restricting not only the specific uses of sampling at issue here but also a range of scientific methods employed in the past to ensure that the census is as accurate as possible.

In practical terms, this case may well determine whether the principle of one person, one vote will be an empty promise or a

meaningful guarantee. By constitutional command, the census is used for determining how many seats each State shall have in the House of Representatives. See U.S. Const. Art. I, § 2; U.S. Const. Amdt. XIV. In consequence, it is also used in determining how many votes each State shall have in the electoral college. See U.S. Const. Art. II, § 2, cl. 2.

As a technical matter, the census data that will be used for *apportioning* House seats are the only data at issue in this case. The statutory and constitutional arguments made by the House of Representatives address — and purport to address — only the procedures that may be used by the Secretary of Commerce in "the determination of population for purposes of apportionment of Representatives in Congress *among the several States*." 13 U.S.C. § 195 (emphasis added); accord U.S. Const. Art. I, § 2, cl.3. The only relief sought in this case — or granted below — was declaratory and injunctive relief preventing use of scientific sampling methods "for the purpose of apportioning Representatives among the several States." See Complaint at 13-14; Jurisdictional Statement ("J.S.") Appendix ("App.") 67a (order).

Indeed, it is undisputed that the Census Act *requires* the Secretary, "if he considers it feasible," to "authorize the use of the statistical method known as 'sampling' in carrying out" all the other provisions of Title 13 of the U.S. Code. 13 U.S.C. § 195.[2] These provisions include those relating to the preparation and use of census data for purposes of congressional redistricting — that is, the drawing of congressional district lines within each state after the seats in Congress have been apportioned among the States — and for state and local redistricting. 13 U.S.C. § 141(c).

Nonetheless, constitutional principles beyond the apportionment of seats in Congress should inform consideration

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[2] See, *e.g.*, House of Representatives' Memo in Support of Sum. Jud. in Dist. Ct. ("House S.J.") at 3-4 (making this point); *id.* at 25 (same); *id.* at 40 (same).

of this case. A decision by this Court prohibiting the Bureau of the Census from using scientific statistical sampling to correct errors in the collected data used for purposes of apportionment could ultimately impede the ability of the Bureau to use such data — "'the best population data available,'" *Karcher v. Daggett*, 462 U.S. 725, 738 (1983) (citation omitted) — for other purposes as well. Like the requirement of fair apportionment, the constitutional principle announced by this Court that, among the congressional districts *within* each state "each person's vote is to be worth as much as another's," *Wesberry v. Sanders*, 376 U.S. 1, 8 (1964), depends for its vitality upon the accuracy of the data employed. Likewise, because census data is used in state and local legislative redistricting, the production of inaccurate data could render the one person-one vote promise of this Court's decision in *Reynolds v. Sims*, 377 U.S. 533, 568 (1964), nothing more than a teasing illusion.

In addition, of course, census data is used for allocating federal funds, and for administering various federal programs. More than 100 federal programs use population-related data to distribute billions of dollars annually in federal funds, including child welfare services, food assistance, programs for the aging, maternal and child health services, programs to combat drug abuse, family violence prevention programs, child care funding, and education grants.[3] Census data is also used by the private sector for everything from marketing strategies for financial services to determining where to place retail stores. Equal representation, a fair distribution of resources, and even the most

[3] See, *e.g.*, Congressional Research Service, *Federal Programs Using Some Aspect of Population as a Qualifying or Limiting Factor to Dispense Program Funds or Services* (Memorandum to House Government Reform & Oversight Committee dated April 9, 1998) (listing 164 federal programs with estimated FY 1998 obligations of over $75 billion); U.S. Bureau of the Census, *Preparing for Census 2000: Subjects Planned for Census 2000, Federal Legislative and Program Uses* (March 1997); GAO, *Formula Programs: Adjusted Census Data Would Redistribute Small Percentage of Funds to States* (GAO/GGD-92-12) (Nov. 1991) (listing 100 federal programs).

efficient operation of our economy, thus depend on an accurate census.

2. If the Census Bureau is forbidden to use statistical methods to correct errors in its collected data, the predictable result will be unwarranted inequalities among Americans in political power and the distribution of federal resources. As this Court is aware, "[s]ome segments of the population are 'undercounted' to a greater degree than are others." *Wisconsin v. New York*, 517 U.S. 1, 7 (1996). Members of minority groups, children, rural populations, the poor, renters, transients, and members of similar groups are undercounted at a higher than average rate. Some higher income individuals who, for example, may have residences in more than one state and may therefore be counted in two or more locations, have been *over*counted. The result has been dubbed the "differential undercount." *Id.* at 6.

As this Court has explained:

> Since at least 1940, the Census Bureau has thought that the undercount affects some racial and ethnic minority groups to a greater extent than it does whites. . . . In the 1980 census, for example, the overall undercount was estimated at 1.2%, and the undercount of blacks was estimated at 4.9%.

Id.

The problem grew worse in the 1990 census, the first since 1940 in which overall coverage did not improve over that in the previous census.[4] Studies indicate that the 1990 census missed approximately 8.4 million people — largely poor people, children, and minorities — and double-counted or incorrectly included 4.4 million others, for a net undercount of 4 million.[5]

[4] See GAO, *Decennial Census: 1990 Results Show Need for Fundamental Reform* 19-20 (June 9, 1992).

[5] U.S. Bureau of the Census, *Report to Congress: The Plan for Census 2000* at 44 (Aug. 1997) ("*Report to Congress*").

The net undercount was 4.4% for blacks, 5.0% for Hispanics, 2.3% for Asians and Pacific Islanders, and 4.5% for American Indians, compared with 0.7% for non-Hispanic whites.[6] In short, the census missed about one person in 20 for Hispanics and African Americans, but less than one in 100 for whites. The difference between the black and nonblack estimated undercounts was the largest since 1940.

The differentially undercounted are real people whose neighborhoods, cities, counties and States (in the congressional apportionment context) consequently have been deprived of the representation, and federal resources, to which they are entitled. Individuals in States with a large undercounted population are likely not to receive equal representation in the House of Representatives; individuals in States with a large overcounted population are likely to get more than their share.

Newly available data permit a concrete examination of the undercounting problem, using information released by the Bureau of the Census in July 1998 adjusting 1990 population data using the Bureau's 1990 quality check post-enumeration survey (PES).[7] For the Court's convenience, a listing of the net undercount or overcount in each U.S. Congressional District is attached as Appendix A.[8]

The data show that the congressional district with the most serious undercounting problem, New York's 16th District, had a net undercount of more than 40,000 persons, out of an actual total of 620,583. In this district, approximately 6.5 percent of the population was not included in the Census Bureau's tabulation

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[6] See *id.* at 4; see also GAO, *Decennial Census: 1990 Results Show Need for Fundamental Reform* at 21.

[7] The PES was an adjustment favored in 1987 by the Director of the Census Bureau, but ultimately rejected by the Secretary. See *Wisconsin v. City of New York*, 517 U.S. at 10-11.

[8] This listing includes a note explaining the methodology of its preparation and the sources of the data it includes.

of the national population. See App. A2. Not surprisingly, this district is over ninety percent racial minority, including 60.2% Hispanic and 33.6% African American. *Id.* The data show that the undercounting problem is overwhelmingly centered in heavily minority districts. By contrast, 36 districts have net undercounts of fewer than 1,000 voters, and 21 of these in fact have net *overcounts*. See App. A13-14. Not surprisingly, these districts are disproportionately *non*-minority. *Id.*

SUMMARY OF ARGUMENT

The House argues that the only permissible census is one in which all the data is derived from counting singly every individual who can be located. The text of the Census Act and the Constitution, and the consistent practice since the time of the Framing, belie this assertion. If this Court accepts the House's invitation and imposes such a rule by judicial command, it will work a profound change in the law, prohibiting not only the Census Bureau's uses of scientific sampling that are at issue in this case, but also its use of other non-counting techniques that have long and routinely been used by the Bureau to produce the most accurate census data possible.

The judgment of the district court is wrong as a matter of law. To begin with, under separation of powers principles and the constitutional doctrine of Article III standing the instant suit — brought by Speaker Gingrich "for and on behalf of the House of Representatives"[9] — is not justiciable.

On the merits, the district court erred in its construction of the Census Act. The proposed use of sampling is entirely consistent with its text. Indeed, the decision below represents a marked departure from historical practice under the Census Act.

Finally, if this Court should reach the constitutional question

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[9] Departments of Commerce Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1998 ("the 1998 Appropriations Act"), §209(g), Pub. L. 105-119 (Nov. 26, 1997), J.S. App. 79a.

concerning the meaning of the Census Clause of Article I, §2, cl.3, both text and history make clear that the use of statistical adjustment to correct for inaccuracies and omissions in the data collected for purposes of apportionment of seats in Congress is not constitutionally prohibited.

ARGUMENT

I. Under *INS v. Chadha*, a Single House of Congress May Not Bring Suit to Obtain a Narrowing Construction of its Own Delegation of Authority.

Congress has delegated to the Secretary in 13 U.S.C. § 141(a) its authority to determine the manner in which the census shall be taken. The House of Representatives now brings suit on statutory and constitutional grounds arguing that the Secretary has exceeded the scope of this legislatively delegated authority.

Under the separation of powers principles articulated in *INS v. Chadha*, 462 U.S. 919 (1983), a single House of Congress may not bring a suit such as this which seeks a narrowing construction of a legislative delegation of policymaking authority to an administrative agency. If Congress believes that the agency has "exceeded [legislatively delegated authority] . . . it is open to . . . the power of Congress to modify or revoke the authority entirely." *Id.* at 954-55 n.16. *Chadha*, however, makes clear that Congress can exercise that power "in only one way; bicameral passage followed by presentment to the President." *Id.* at 954-55. Otherwise, "Congress must abide by its delegation of authority until that delegation is legislatively altered or revoked." *Id.* at 955.

Here a House of Congress seeks — apparently for the first time in its history, see J.S. App. 41a-45a (describing other situations in which a House of Congress has initiated legislation) — to go into an Article III court to obtain an authoritative judicial construction of its own delegation of policymaking authority. Since this suit would, if successful, have "the purpose and effect of altering the legal rights, duties and relations of

persons," *Chadha*, 462 U.S., at 952, by invalidating the Secretary's exercise of delegated authority, it may not be undertaken by a single House of Congress any more than could the single-chamber legislative veto invalidated in *Chadha*. This suit is not justiciable. "[O]nce Congress makes its choice in enacting legislation, its participation ends. Congress thereafter can control the execution of its enactment only indirectly — by passing new legislation." *Bowsher v. Synar*, 478 U.S. 714, 733-34 (1986).[10]

Congress can, of course, effectively bestow upon *third parties* the power to challenge in court an agency's construction of the scope of its legislatively delegated authority. This happens routinely when a statute creating rights in third parties contains ambiguous language that implicitly delegates to an executive department authority to construe that language in the first instance. See, *e.g.*, *Rust v. Sullivan*, 500 U.S. 173, 187 (1991) (recipients of Title X funds argue that "regulations exceed the Secretary's authority under" the language of the statute); *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984) (health and environmental groups argue that statutory term "stationary source" of air pollution cannot bear the construction given it by the EPA). This very case arguably involves the Secretary's exercise of just such delegated authority. See *infra* at pp. 24-26 (if 13 U.S.C. § 195 renders 13 U.S.C. § 141 ambiguous, the Secretary's interpretation is entitled to deference). What Congress may not do, without running afoul

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[10] Individual members of Congress in their official capacities and one or both Houses of Congress have of course been held to have power to invoke the jurisdiction of Article III courts in certain circumstances, even to challenge the constitutionality of executive action. See, *e.g.*, *Barnes v. Kline*, 759 F.2d 21,28-29 (D.C. Cir. 1985) (finding that the U.S. Senate and individual members of the House had standing to sue). Although these holdings have been controversial, see, *e.g.*, *Moore v. United States House of Representatives*, 733 F.2d 946, 956 (D.C. Cir. 1984) (Scalia, J., concurring in result), they do not raise the same separation of powers concerns present here.

of separation of powers principles, is attempt to bestow, by any form of language, such power to bring suit upon a single House of Congress.

Thus, as this Court recently explained in *Raines v. Byrd*, 117 S. Ct. 2312, 2321-22 (1997), although "a plaintiff with traditional Article III standing" may bring a suit in which the Court may pass on the lawfulness of the action of one branch that finds itself in a dispute with another, "the restricted role" of "Article III courts" under "[o]ur regime[]," *id.* at 2322, means that such courts may not "adjudicate" the legality of one branch's actions in a suit brought by its adversary branch seeking resolution of this type of "confrontation[] between one or both Houses of Congress and the Executive Branch." *Id.* at 2321. See also *id.* at 2324 (Souter, J., concurring in judgment) ("interbranch controversy" should be addressed only if a "private suit" is brought "by a party from outside the Federal Government").

The restriction on suits seeking a narrowing construction of legislative delegations of policymaking authority precisely parallels the restriction upon congressional delegation of such authority announced in *Chadha* itself. Congress has been permitted to delegate authority — essentially legislative in character — to the Executive Branch, to the independent agencies and, indeed, even to private persons. See, *e.g.*, *United States v. Rock Royal Co-operative, Inc.*, 307 U.S. 533, 577 (1939); *Currin v. Wallace*, 306 U.S. 1 (1939). What it may not do is delegate that power to one house of Congress. See *Chadha*, 462 U.S. at 987 (White, J., dissenting) (under the majority's decision, "the legislature can delegate [legislative] authority to others but not to itself"); see also *id.* at 953 n. 16 (opinion of the Court) (congressional authority to delegate power to administrative agencies provides no support for authority to delegate legislative veto power to itself).

Before bringing this suit, Congress had already failed to obtain a presidential signature on legislation that would, in fact, have overridden the Secretary's construction of the scope of his

delegated authority. See J.S. App. at 6. Congress may now fear that it will not be able to obtain the two-thirds majorities necessary to override the President's veto. But one branch's inability to act as some or even most of its members would like it to can have no bearing on the applicability of separation of powers principles. Cf. *Clinton v. City of New York*, 118 S. Ct. 2091, 2103 (1998) (Congress may not give the President a portion of its Article I power in an attempt to provide a check on its own unwise exercise of its power; repeal of portions of statutes must be wrought in conformity with the procedures set out in Article I).

II. Because the House of Representatives Itself Will Suffer No Injury Even from the Use in Congressional Apportionment of Census Data Compiled in a Manner Inconsistent With Law, It Lacks Standing to Bring This Suit.

This case is also not justiciable because the House of Representatives as a body lacks the "injury in fact" that forms the "irreducible minimum" of Article III standing. *Virginia v. American Booksellers Assn.*, 484 U.S. 383, 392 (1988).[11]

A. The House has pressed the claim, and the court below concluded, that it would suffer injury from its own unlawful composition. The House argued in the district court that it has "an obligation to ensure its seats are 'apportioned among the several states . . . according to their respective Numbers.' Art. I, §2, cl. 3." Opposition of Plaintiff United States House of Representatives to Defendants' Motion to Dismiss in Dist. Ct. at 20. An apportionment of congressional seats among the States

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[11] The 1998 Appropriations Act, §§ 209(d) and 209(d)(3) (paragraph break omitted), J.S. App. 77a, declares that "[f]or purposes of this section an aggrieved person . . . includes either House of Congress." But "[i]t is settled that Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Raines*, 117 S. Ct. at 2318 n. 3.

based upon census data derived in contravention of the Census Act or the Constitution, it argued, would "wrongly allocate[]" some of its seats, causing it injury as an institution. See *id.* at 20-22.

The wrongful allocation of a seat in Congress to one or another State, however, would do no injury to the House of Representatives *as a body*. Accepting the plaintiffs' allegations as true, the Congress will be composed in part of Representatives from States that will be harmed, in part of Representatives from States that will be helped, and in part of Representatives from States that will not be affected, by the supposedly unlawful apportionment. But the Congress *as a body* will not be injured even if, because of a wrongful determination of the number of people in each State, one or another State has fewer — and one or another State greater — than the appropriate number of Representatives.

A malapportioned Congress, rather, may be the *instrument* of injury to others: those States that are under-represented, their representatives, and the voters whose votes are diluted. This Court has acknowledged these parties' injuries, granting standing to such States, voters, and their representatives, in cases alleging an erroneous apportionment of Representatives among the several States. See *Franklin v. Massachusetts*, 505 U.S. 788, 790 (1992) (suit by the State of Massachusetts and two of its registered voters arguing that it was entitled to one more, and Washington State to one less, Representative in Congress); *Department of Commerce v. Montana*, 503 U.S. 442, 446 (1992) (suit brought by the State of Montana, its Governor, Attorney General and Secretary of State on behalf of its voters, and by its two Senators and Representatives, arguing that it was entitled to an additional seat in Congress).[12]

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[12] The injury to representatives this Court recognized in the *Montana* case appears to have been the injury they suffered in their capacity as representatives of the voters of an injured State; they included both Senators and Representatives. Once seated, the only complaint a Member of Congress might have about the number of seats apportioned to his or her State would have to do with the strength of his or her vote within the State's delegation should the House be required to elect the President because there is no majority in the Electoral College. See U.S. Const. Amdt. XII (each State has one vote). Ironically, a Member from an *over*represented State might be able to claim his or her vote was diluted with respect to this procedure by the unlawfully large congressional delegation representing his or her State.

A contrary rule, that the House itself is injured by a wrongful apportionment of its own seats, would lead to absurd results. For under the principle urged by the House, not only would the House be able to bring a suit such as the instant one or *Franklin* or *Montana* alleging that a particular apportionment works (or would work) a wrongful inequality in representation between States, but also suits under *Wesberry v. Sanders*, 376 U.S. 1 (1964), charging that a particular State's inclusion of unequal populations among its congressional districts works a similar inequality between districts. Wrongful apportionment of a State's congressional seats among the citizenry of that State has an identical effect upon Congress's "lawful composition" J.S. App. 20a, as would a wrongful apportionment of congressional seats among the States. See *Wesberry* at 20 (Harlan, J., dissenting) (observing that the requirement announced in that case — "equal representation in the House for equal numbers of people" — "casts grave doubt on the constitutionality of the composition of the House of Representatives").

Yet this Court has long held that the right to an equally weighted vote in congressional elections is "designed to prevent debasement of voting power and diminution of access to elected representatives." *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969). It would require a novel justification for these rules — and would open the door to a wide range of suits — were this Court to conclude that a House of Congress is injured by its own malapportionment.

Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187

(1972), on which the district court relied even though it did not deal with malapportionment, J.S. App. 20a-22a, is not to the contrary. In that case, a state senate intervened and brought an appeal to challenge a district court's order reducing its size from the statutorily-mandated 67 members to 35 members. But a legislative body denied the benefit of operating with the full number of members to which it is entitled is injured in a way a body whose seats have been doled out unevenly is not. In such a case, the unlawfully composed body is not only the instrument of harm to voters; it is itself harmed, both in the additional responsibilities each of its reduced number of members are likely to have to assume, and in the very quality of its deliberations.

B. The "informational injury" upon which the district court also relied would similarly sweep far too broadly. Myriad statutes require the delivery of information to Congress. *E.g.*, 10 U.S.C. § 113(c) (annual report of the Secretary of Defense on the "expenditures, work and accomplishments" of the military). If alleged maladministration of the law in a way that would alter the information received by Congress were enough to grant standing, Congress would have a powerful new tool for interfering with the execution of the laws by the Executive branch. Recognition of this type of injury would permit Congress to give itself a pervasive role in the execution of the laws through, for example, the simple expedient of requiring executive officials to report their decisions to Congress.

In light of the separation of powers principles that underlie the doctrine of standing, see Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U. L. REV. 881, 894-95 (1983), this Court's words in a different context are applicable here:

> To permit Congress to convert the undifferentiated public interest in executive officers' compliance with the law into an "individual right" vindicable in the courts is to permit Congress to transfer from the President to the courts the Chief Executive's most important

> constitutional duty, to "take Care that the Laws be faithfully executed," Art. II, § 3.

Lujan v. Defenders of Wildlife, 504 U.S. 559, 577 (1992). See also *Buckley v. Valeo*, 424 U.S. 1, 138 (1976) (power to sue to enforce the law is beyond the scope of Congress's rightful authority to obtain information in aid of its power to legislate).

III. The Historical Practice Undermines The House's Arguments on the Merits.

The House's arguments on the merits all take as their point of departure the assumption that a "traditional enumeration" includes only a "headcount" of every person who can be "located." House of Representatives' Memo in Support of Sum. Jud. in Dist. Ct. at 25. The House argues that "enumeration" has always been understood to require that all "information be derived from counting, not statistical estimation." House of Representatives' Reply Memo in Support of Sum. Jud. in Dist. Ct. at 32. Consequently, the House argues, our nation must satisfy itself with a census that we know inaccurately undercounts the population.

The historical practice, however, shows that the census has never depended solely on a "one-by-one" counting method for collecting data. The statutes providing for the first censuses did not even require that data be collected by a personal visit to each household. In addition, since the very beginning of the census, mechanisms have been included for the correction of inaccuracies in the collected data. The censuses during the last half-century have included statistical methods for the imputation of individuals in the national population count that are indistinguishable in principle from the scientific sampling that the Department of Commerce plans to use in Census 2000. The only difference is that the scientific methods at issue here are *more* reliable than those used in the past.

A. The first six censuses were done not so much by

"headcount" as by "house count." "[T]he census unit to be counted was the household." Margo Anderson, THE AMERICAN CENSUS 13 (1988). Even then, with respect to the first two censuses, there was no requirement that the data be obtained in any particular way. In particular, an examination of the early statutes makes clear that the requirement that data for each household be obtained by an actual inquiry at every house — a requirement abandoned more than thirty years ago, in 1964, in favor of mail-in forms — was itself a late innovation, imposed only at the time of the third census in 1810.

The statute authorizing the first census, which required federal marshals "to cause the number of the inhabitants within their respective districts to be taken," Act of March 1, 1790, 1 Stat. 101, did not impose any limit on the method by which those charged with the enumeration were to obtain their data.[13] The statute providing for the second census again included no instruction concerning the method by which data were to be collected. See Act of Feb. 28, 1800, 2 Stat. 11.

Only in the *third* census, undertaken pursuant to the Act of March 26, 1810, 2 Stat. 564, did Congress specify for the first time that "the said enumeration shall be made by an actual inquiry at every dwelling-house, or of the head of every family within each district, and not otherwise." *Id.* The absence of this language from the earlier statutes is telling. And indeed, the very implication of the word "otherwise" at the end of the quoted text is that an "enumeration," as that word was understood during the

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[13] The marshals were simply required to take an oath to "well and truly cause to be made, a just and perfect enumeration and description of all persons resident within my district." Act of March 1, 1790, 1 Stat. 101. They were also authorized to hire assistants who had to take a similar oath. *Id.* The statute did require every person "more than sixteen years of age . . . belonging to any family within any division of a district . . . to render to such assistant of the division, a true account, *if required*, to the best of his or her knowledge, of all and every person belonging to such family respectively," *id.* §6, at 103 (emphasis added), but did not specify the manner in which the assistant was to ascertain how many persons were in each household.

twenty years after the Framing, *can* be undertaken by means other than house-by-house inquiry.

By 1850, the responsibilities of census takers were relaxed. See Act of May 23, 1850, 9 Stat. 428, 430, as amended by the 1850 Census Act, the Act of August 30, 1850, 9 Stat. 445. Census takers were permitted to collect data concerning the members of each family, "by inquiries made of some member of each family, if any one can be found capable of giving the information, but if not, then of the agent of such family." *Id.* By 1929, Congress instructed census takers to collect information from neighbors when no competent person could be found at a family's usual place of abode 13 U.S.C. § 201 (1952 ed.) (codifying Act of June 18, 1929, c.28, §§1, 4, 46 Stat. 21).

More recent censuses have departed even further from the "headcount" model the House claims is required. For the 1970 census, the requirement of a "house count" was eliminated and mail-in, mail-back forms were used. See Pub. L. 88-50, 78 Stat. 737 (1964).

B. Moreover, the census has, from the beginning, included mechanisms to correct for inaccuracies in the collected data. The statute authorizing the first census required preliminary results to be posted in"two of the most public places within [the relevant part of the district], there to remain for the inspection of all concerned." Act of March 1, 1790, § 7, 1 Stat. 101, 103. This was intended to provide an opportunity for correction of inaccurate data included in the schedule. Anderson, *supra*, at 14. The statute authorizing the second census again included the "posting" mechanism to correct for errors in the collected data, see Act of Feb. 28, 1800, 2 Stat. 11, as did every such statute passed through 1840 census. See, *e.g.*, Act of March 3, 1839, § 7, 5 Stat. 331, 335.

In early censuses, raw data was revised and corrected by census clerks at their discretion. It was "many decades before the federal government, as well as private statisticians, codified rules for correcting and evaluating the census schedules." Anderson, *supra*, at 25. In 1840, Congress authorized census

clerks to "correct" the returns. *Id.* at 26; see Act of Feb. 26, 1840, § 9, 5 Stat. 368, 369. If data were missing, the clerks had "to make discretionary decisions" about "whether to interpolate the information, write to the assistant marshal and ask for the missing information, or simply omit it." Anderson, *supra*, at 43, 49. In 1851, for example, many of the census returns from California were burned or lost. The Census Office estimated the population of California at 165,000, although returns existed only for 92,000 persons. *Id.* at 46.

In this century, statistical methods have also been incorporated into the census. "Since at least 1940, statistical imputation has been used when an enumerator knew that a housing unit was occupied, but could not obtain information on the number of persons living in that unit." *Report to Congress* at 23. In such situations, the Bureau *imputes population counts* by using completed census questionnaires from nearby units to generate imputed information for the unit for which it cannot gather data. See *Young v. Klutznick*, 497 F. Supp. 1318, 1333 (E.D. Mich. 1980), *rev'd on other grounds*, 652 F.2d 617 (6th Cir. 1981). This extrapolation is based on an assumption that people in proximate housing units have similar characteristics. The number of persons imputed to the unit (and the assumption the occupant has not been counted elsewhere) is not based on any person's actual knowledge.

Whether deemed "correction," "adjustment," or "augmentation" of collected data, this longstanding practice of imputation — which would be prohibited under the House's view — fatally undermines the House's arguments on the merits. The 1970 population figures used for apportionment of seats in Congress included about *900,000 imputed persons* from housing units which the Bureau found to be occupied but from which it could not determine a population count.[14] In 1980, the Bureau

[14] Statement of L. Nye Stevens, Director, Government Business Operations Issues, General Government Division, GAO, Before the Subcomm. on Census on Population, House Comm. on Post Office and Civil Service, *Components of the 1990 Census*, at 12 (Feb. 21, 1991).

imputed about 762,000 persons into the census numbers, which resulted in the shifting of a congressional seat from Indiana to Florida.[15] In 1990, about 54,000 imputed persons were included in the population data.[16]

C. Other statistical methods have been used as well. In 1970, the Bureau used scientific statistical sampling in its National Vacancy Check, a statistical program designed to account for persons actually living in housing units that the Bureau, at the end of its initial counting efforts, had classified as "vacant." Through a sample of 15,000 housing units, the Bureau calculated that just over 1,000,000 persons actually lived in housing units initially designated as vacant.[17] It then distributed these 1,000,000 persons among the States in proportion to the distribution of vacant units. Although it claims to object to the use of sampling, the House does not even challenge the plan to use a similar National Vacancy Check in the 2000 census.

Scientific sampling methods were also used to add to the 1970 count after a Postal Service records check of all housing units in the rural portions of 16 southern states, the area the Bureau believed was subject to the highest undercount. Some 480,000 persons were added to the census count as a result of this scientific sampling procedure.[18]

Congress was well aware of these statistical techniques and approved them. For example, with respect to the National Vacancy Check, the Census Director testified before Congress that "[t]he improvement achieved by this innovation" would add

[15] *Id.*

[16] *Id.*

[17] Bureau of the Census, *1970 Census of Population and Housing: Effect of Special Procedures to Improve Coverage in the 1970 Census* 12 (1974).

[18] See GAO, *Programs to Reduce the Decennial Census Undercount* (GAO/GGD-76-72), at 12 (May 5, 1976).

"perhaps 1 million persons" to the census count.[19] The House Committee on Post Office and Civil Service discussed both this program and the Postal Service check favorably and recommended that additional funds be sought. See H.R. Rep. No. 91-1777, at 22, 41, 43 (1970).

D. The only novelty involved in the Commerce Department's Plan for Census 2000 lies in the sophistication, and hence the reliability, of the scientific methods the Secretary seeks to use. The Census Bureau is preparing to take every reasonable step to contact each occupied household in the nation and obtain a complete census. The Bureau will send census questionnaires by mail, and in some circumstances hand delivery, to every occupied housing unit known to it. See *Report to Congress* at 12. It will send follow-ups and reminders, fund a public outreach and advertising campaign, and even arrange for the placement of forms in public places. It will deploy census takers to homeless shelters, soup kitchens, nursing homes, college dormitories, migrant and seasonal farm worker camps, military barracks, American Indian reservations, and even remote areas in Alaska. *Id.* The question posed here is thus not whether a full census must be attempted, or whether a good faith effort to reach every person must be made, but only whether the Bureau will be permitted, as it has been in the past, to use the best available scientific methods to correct for inaccuracies and omissions in collected data and to ensure the most accurate census data possible.

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[19] *Accuracy of the 1970 Census Enumeration and Related Matters: Hearings Before the Subcomm. on Census and Statistics of the Comm. on Post Office and Civil Serv., House of Representatives*, 91st Cong., 2d Sess. 6 (1970).

IV. The Secretary Has Discretion under the Statutes to Use Scientific Statistical Sampling for Purposes of Apportionment of the Representatives In Congress.

On its merits, this case involves the harmonization of two statutory provisions in the Census Act, one of which permits scientific statistical sampling and the other of which does not by its terms prohibit such sampling. Properly construed, these provisions leave the matter of sampling to the Secretary's discretion. Moreover, on its face, the House's claim that the Secretary is powerless to employ scientific techniques to correct known inaccuracies contravenes the principle that the Census Act "embodies a duty to conduct a census that is accurate and that fairly accounts for the critical representational rights that depend on the census and the apportionment." *Franklin v. Massachusetts*, 505 U.S. at 820 (Stevens, J., joined by Blackmun, Kennedy and Souter, JJ., concurring in part and in the judgment).

A. The Census Act includes two provisions authorizing the use of statistical methods, including "sampling." The first, 13 U.S.C. § 141(a), provides:

> The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of the population as of the first day of April of such year . . . *in such form and content as he may determine, including the use of sampling procedures and special surveys.*

The italicized language (added in 1976) makes clear that the Secretary has the authority to use scientific statistical sampling techniques. It is also plain that the "decennial census" to which this subsection refers includes the census undertaken for purposes of apportionment of Representatives in Congress. See 13 U.S.C. § 141(b) (referring to "[t]he tabulation of total population by States *under subsection (a) of this section* as required for the apportionment of Representatives in Congress among the several States") (emphasis added); see also 2 U.S.C.

§ 2a(a) (requiring the President to "transmit to the Congress a statement showing the whole number of persons in each State, . . . *as ascertained under the . . . decennial census of the population*" for use in congressional apportionment) (emphasis added). Standing alone, then, § 141 would leave no doubt that Congress's delegation of authority to the Secretary to conduct the census includes authority for "the use of sampling procedures."

The second statute, 13 U.S.C. § 195, actually *mandates* the use of sampling, at least where the Secretary considers it feasible, but with a limitation relating to apportionment:

> Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as "sampling" in carrying out the provisions of this title.

As originally enacted in 1957, § 195 authorized, rather than required, the use of sampling for non-apportionment purposes.[20] The "except for" clause of § 195 now creates an exception to a mandate, rather than an exception to an authorization. By its terms, therefore, § 195 now provides only that the Secretary is not *mandated* to use sampling in the enumeration for apportionment.

The district court of course read the "except for" clause to *prohibit* the use of sampling in apportionment. It is black letter law, however, that a statute must be construed if possible to give each word effect. E.g., *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979). Under that principle, the amended §§ 195 must be read as *requiring* sampling (if feasible) for non-apportionment purposes and as *permitting* it in the Secretary's discretion for

[20] 13 U.S.C. § 195 originally provided that "[e]xcept for the determination of population for apportionment purposes, the Secretary may, where he deems it appropriate, authorize the use of the statistical method known as 'sampling' in carrying out the provisions of this title." Pub. L. 85-207, 71 Stat. 484 (Aug. 28, 1957).

apportionment purposes. The alternative put forward by the House — that sampling is prohibited for purposes of congressional apportionment, but required if feasible for every other purpose — is not only unsupported by the plain language of § 195, but would also render the 1976 amendment to § 141(a) meaningless, since that section clearly refers to the census undertaken for the purpose of congressional apportionment.

The court below recognized this problem. It did *not* adopt the House's suggested reading, that the references to sampling and special surveys in § 141(a) apply only to the collection of demographic data undertaken in conjunction with the decennial census. See J.S. App. 60a. This would have required an impermissible rewriting of the plain language of § 141(a). Cf. *United States v. Monsanto*, 491 U.S. 600, 611 (1989).

Rather, the district court concluded that the "general grant" in § 141(a) "*permits* sampling techniques . . . in the conduct of the decennial census," J.S. App. 62a (emphasis added), but that § 195 "proscribes the same." J.S. App. 61a. This led it to conclude that the two provisions "conflict," *id.*, and that the question of the statute's meaning therefore turned on which provision was the "general" and which the "more specific." *Id.*

Because these two provisions were *adopted in the same Act*, however, a court should not *choose between them* without first attempting to fulfill its obligation is to *harmonize* them.[21] Both provisions *can* be given effect if the "except for/shall" construction is read to render the use of sampling for congressional apportionment *discretionary* while making sampling for all other purposes, at least where feasible, mandatory. The district court, however, did not even attempt to read the statute as a whole. See J.S. App. 54a (misconstruing § 195 after examining it in isolation, and concluding, *inter alia*,

[21] The entire question of which statute is "general" and which "specific" is, in any event, a red herring. Since, on the lower court's reading, one provision specifically "permits" sampling and the other specifically "proscribes" it, *neither* is more specific.

that the only indications of congressional intent in 1976 to permit sampling were the "subtle shifts in language" in § 195).

The district court's failure to consider the statute as a whole also contributed to the mistaken conclusion it drew from its consideration of the "wedding dress" example. The court began by erroneously assuming that it would have been shocking for Congress to have permitted the use of sampling for purposes of correcting inaccuracies and omissions in collected data; it analogized a sampling-free census to a "wedding dress" that is "extraordinarily fragile and of deep sentimental value." J.S. App. 53a. The history of the use of non-counting methods of enumeration, see *supra* at pp. 15-20, belies the district court's assumption.

The court below then brushed aside examples from the United States Codes where the "except for/shall" formulation is used to delegate *discretion* to a federal officer, see J.S. App. 51a-52a (citing 5 U.S.C. § 555(e); 16 U.S.C. § 230d; 16 U.S.C. §§ 459i-4, 460w-4),[22] and instead relied on a hypothetical example of its own: "except for my grandmother's wedding dress, you shall take the contents of my closet to the cleaners." J.S. App. 53a.

But even if a census without sampling were like a wedding dress in the closet, the court's example is incomplete because it ignores § 141(a). If the district court had read the statute as a whole its example would have read:

> 1. You shall have discretion to take care of my grandmother's wedding dress in whatever way you may determine, including the use of dry cleaning. (§ 141(a)).
> 2. Except for my grandmother's wedding dress, you shall take the contents of my closet to the cleaners. (§ 195).

These words, while not artful, would clearly permit one to have the dress cleaned.

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[22] See also 2 U.S.C. § 384; 12 U.S.C. § 2076a; 14 U.S.C. § 203.

B. At most the House's reading of § 195 renders ambiguous the statutory language addressing whether the Secretary has discretion to utilize sampling to correct apportionment data. See *Concrete Pipe and Products v. Construction Laborers Trust*, 508 U.S. 602, 627 (1993) (incoherence of statutory language is a form of ambiguity). In such circumstances, a Court's obligation is to defer to the Secretary's reasonable interpretation of the statute. *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-845 (1984).

The court below dismissed this obligation with the assertion that "the Secretary of Commerce has reversed his position on this issue" and "has not amply justified his change of interpretation with a 'reasoned analysis.'" J.S. App. at 46a-47a n. 11. These conclusions reflect a profound misunderstanding of the law.

Chevron itself upheld a new agency policy that departed from past practices: "An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis." 467 U.S. 863-64. So long as agency's new views are not "[s]udden and unexplained," "change is not invalidating, since the whole point of *Chevron* is to leave the discretion provided by the ambiguities of a statute with the implementing agency." *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 742 (1996).

Rust v. Sullivan, 500 U.S. 173, 187 (1991), makes clear that the requirement of "reasoned analysis" is satisfied by an agency's determination that a change in course is "more in keeping with the original intent of the statute" and "justified by" present needs and exigencies. *Id.* In this case, the Bureau's conclusion that the statute permits it to implement its plan for Census 2000 plainly meets that standard.

The Bureau has explained that "[c]ensus takers have *never* been able to contact and count each and every resident of this nation. As a result, information on less than the whole population has always been used to characterize the whole population." *Report to Congress* at 23. Further, "Census 2000

will not be the first time that the Census Bureau has used statistical methods to correct for problems in physical enumeration and to provide a more accurate final result." *Id.* The Bureau noted that it had used statistical imputation since at least 1940; that it had used sampling as part of the National Vacancy Check in 1970; that sampling enjoys overwhelming support in the scientific community; that sampling is needed to reduce the differential undercount; and that, "[b]ecause of changes in our society, a sample drawn by including only those physically contacted" would be "markedly inaccurate." *Id.* at 23-24. The Bureau also analyzed the Census Act and concluded that it authorized the use of sampling. *Id.* at 52-54.[23] The Bureau's

[23] The Secretary's change in position is also far less sudden than the district court supposed. In 1980 the Census Bureau expressed the view that Section 195 "expressly prohibited the use of sampling in the apportionment process," 45 Fed. Reg. 69,366, 69,372 (1980). This view, however, was short-lived. Indeed, congressional questioning of Bureau officials *preceding* the 1980 census as to the technical feasibility of adjusting population counts reveals that neither Congress nor the Bureau viewed § 195 as a bar to adjustments for apportionment purposes and that the Bureau's hesitancy resulted from a lack of technical proficiency at the time, rather than a statutory prohibition. *E.g.*, *1980 Census: Hearing before the Subcomm. on Census and Population of the House Comm. on Post Office and Civil Service*, 94th Cong., 2d Sess. 20 (1976) (exchange between Vincent P. Barabba and Rep. Patricia Schroeder).

Throughout the 1980s the Bureau committed significant resources toward making statistical adjustment feasible for the 1990 census. See, *e.g.*, *Wisconsin v. New York*, 517 U.S. at 7. In numerous congressional briefings, Census officials discussed the sampling that would be performed if it were deemed feasible. There was no suggestion that it was beyond the Bureau's statutory authority. See *1990 Census Adjustment Procedures and Coverage Evaluation: Hearing before the Subcomm. on Census and Population of the House Comm. on Post Office and Civil Service*, 99th Cong., 2d Sess. 10 (1986); *Census Bureau Planning for the 1990 Decennial Census: New York City Field Hearing before the Subcomm. on Energy, Nuclear Proliferation, and Government Processes of the Comm. on Governmental Affairs*, 99th Cong., 2d Sess. 13-14 (1986). When, in 1990, the Secretary decided against the use of sampling, his decision was based on perceived weaknesses in the proposed PES approach, not on any view that it was statutorily prohibited. See *Wisconsin v. New York*, 517 U.S. at 10-11.

considered judgment to use sampling thus clearly warrants *Chevron* deference.[24]

V. The Constitution Permits the Use of Scientific Statistical Sampling to Correct for Inaccuracies and Omissions in Collected Data.

Nothing in the text of the Constitution or the history of the census prohibits the use of statistical methods for the correction of inaccuracies or omissions in collected data. Adoption of the House's position would prevent not only sampling, but also many of the methods that have been used for the past fifty years to produce accurate census data. It would hobble the government in the preparation of the census and would render future censuses far less accurate than they have been in the past. No line can plausibly be found in the Constitution that distinguishes what the House seeks to forbid from what has routinely been done in the modern census.

A. The constitutional text does not prohibit the use of scientific statistical methods to correct for inaccuracies and omissions in the collected census data. In the eighteenth century, as today, the word "enumeration" meant "a determination of the number of." Samuel Johnson defined "enumeration" as "the act of numbering or counting over," Samuel Johnson, *A Dictionary of the English Language* (11th ed. 1797); Noah Webster defined it as "a numbering up or counting over." Noah Webster, *A Compendious Dictionary of the English Language* (1st ed. 1806).

The Constitution thus requires that a determination of the

[24] *Chevron* principles are applicable even if they are not pressed by the Department of Commerce. A court must respect the Executive's institutional prerogatives regardless of whether the Department actively defends them. See *Zschernig v. Miller*, 389 U.S. 429, 443 (1968) (Stewart, J., concurring); cf. *United States v. Munoz-Flores*, 495 U.S. 385, 393 (1990) (court must redress a violation of the separation of powers, even if a coordinate branch "has both the incentive to protect its prerogatives and the institutional mechanisms to help it do so").

populations of each State be made for purposes of apportioning the seats in Congress among them. Nothing in the text suggests that the Congress is required to undertake the kind of one-by-one count of only those individuals who can be located, without employing scientific statistical methods to correct for inaccuracies or omissions in the collected data, that the House suggests.

Indeed, to the extent that the constitutional text suggests anything about the matter, its terms point in the other direction. The purpose of the "enumeration" is to establish the "respective Numbers" within each state, a purpose that is hardly served by the limitation the House would have this Court impose. In addition, the text commits to Congress discretion to "ma[k]e" the "enumeration" "in such Manner as they shall by Law direct." This would hardly be the clearest way of stating that Congress is required to count each person who can be located singly, without making any provision for correcting the collected data to cure inaccuracies or omissions.

In requiring an "enumeration," the Framers' purpose was to replace the "conjectural ratio" of seats temporarily made in Art. I, § 2, cl. 3 with a "more permanent and precise standard." 1 Max Farrand, RECORDS OF THE FEDERAL CONVENTION OF 1787, at 578 (Rev. ed. 1966). Their goal was an accurate count as opposed to the type of guess they had used in apportioning the First Congress. The word "actual," which precedes the word "enumeration," does not modify its content. Whatever means for determining the poulation are included within the concept of an "enumeration" are, by definition, included within the concept of an "actual" enumeration as well.

Moreover, the command of Article I, § 2 that a decennial census be taken is unusual because it is included only by implication. Most constitutional commands are explicit. See, e.g., Art. I, § 4, cl. 1 ("The Congress shall assemble . . ."). No constitutional provision states in so many words that "An actual enumeration shall be made. . . " Rather, the requirement of a census is the implication of the first two sentences of Art. I, § 2,

cl. 3: The first renders an accounting of the population necessary for apportionment and the levying of taxes. The second explains the time and manner by which that accounting is to be made.

A close reading of the language of Article I makes clear that the reference to "[t]he *actual* enumeration" was not meant to describe the method by which the enumeration was to be accomplished, but simply to emphasize that the enumeration *itself* shall be made within three years.[25] This emphasis was necessary because of the textual transition from the preceding description of the formula by which the Numbers of each State are to be determined.[26]

B. Were the constitutional text not sufficient, the history of the census demonstrates that what the House seeks is a radical reinterpretation of what the Constitution requires. See *supra* at pp. 15-20. Until the third census Congress did not require even personal inquiry of each household in the nation. It did, however, provide for a mechanism for correction of the collected data. *Harmelin v. Michigan*, 501 U.S. 957, 980 (1991) (opinion

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[25] Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years in such Manner as they shall by Law direct. . . . and until such enumeration shall be made, the [States shall have the following specified numbers of Representatives].

U.S. Const. Art. I, § 2, cl.3.

[26] That formula of course was superseded by § 2 of the Fourteenth Amendment. U.S. Const. Amdt. XIV, § 2. The language relating to "direct taxes" was superseded by the Sixteenth Amendment, which permits Congress to tax income "without apportionment among the several States." U.S. Const. Amdt. XVI.

of Scalia, J.) ("The actions of the *First* Congress . . . are of course persuasive evidence of what the Constitution means.") (emphasis added) . With the development of scientific statistical methods in this century, the methods used to arrive at final census data—whether termed "corrections," "adjustments," or "augmentations" to the collected data — have included scientific procedures that are indistinguishable in principle from those contained in the Secretary's Plan for Census 2000.

CONCLUSION

The House asks this Court to impose a mandate for a kind of census that has never before been performed and that would render the determination of the "respective Numbers" in each State needlessly inaccurate. The ghost of censuses past which fills the House with nostalgia is a phantom. For the sake of the future, this Court should take care not to make it real.

The judgment of the district court should be vacated and remanded with instructions to dismiss the complaint, or, if this Court should reach the merits, the judgment should reversed.

Respectfully submitted,

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APPENDIX A

NET UNDERCOUNT AND OVERCOUNT BY CONGRESSIONAL DISTRICT

Methodological Note

This Appendix outlines the net undercount or overcount for U.S. congressional districts in the 1990 census. The Appendix was created by matching the unadjusted 1990 population figures for each census block with the corresponding adjusted figures for each block, based on adjusted data released by the Bureau of the Census in July 1998.

This new information made it possible to compose a file for each state listing every census block in the state, the census block's congressional district assignment, and the block's adjusted and unadjusted 1990 population.

In districts where the adjusted population exceeded the unadjusted population, the difference is the net undercount. Because of double-counting and the inclusion of people who should not have been counted, the actual number of persons missed by the methods used in 1990 may have been greater than the net undercount.

In districts where the unadjusted population exceeded the adjusted population, the difference is the net overcount.

ADJUSTED AND UNADJUSTED 1990 POPULATION

Sorted by Net Undercount

9/29/98

DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
NY16	620,583	580,338	0	435	40,245	1	33.6	60.2
NY11	616,460	580,337	0	434	36,123	2	70.4	11.6
NY15	616,042	580,337	0	433	35,705	3	37.1	46.9
CA35	606,486	570,882	0	432	35,604	4	41.3	43.0
CA37	603,250	572,049	0	431	31,201	5	33.1	45.1
NY12	610,898	580,337	0	430	30,561	6	8.9	58.6
NY10	610,809	580,338	0	429	30,471	7	57.4	19.9
CA32	602,769	572,595	0	428	30,174	8	39.1	30.4
CA33	599,621	570,943	0	427	28,678	9	3.8	84.1
CA20	601,264	573,282	0	426	27,982	10	6.1	56.3
CA30	599,388	572,538	0	425	26,850	11	3.1	62.0
NY17	606,427	580,337	0	424	26,090	12	38.5	29.7
TX29	594,592	568,959	0	423	25,633	13	14.9	46.2
AZ06	636,481	610,872	0	422	25,609	14	1.3	13.1
TX20	591,513	566,217	0	421	25,296	15	5.5	61.7
NJ10	619,865	594,630	0	420	25,235	16	59.8	12.4
TX16	591,240	566,217	0	419	25,023	17	3.3	71.1
CA09	598,254	573,458	0	418	24,796	18	32.2	12.1
FL21	586,277	562,519	0	417	23,758	19	3.3	70.3
FL17	585,834	562,519	0	416	23,315	20	56.0	23.4
TX18	590,160	567,364	0	415	22,796	21	44.0	24.3
FL18	585,240	562,519	0	414	22,721	22	2.9	67.5
TX15	588,797	566,217	0	413	22,580	23	1.0	75.2
TX30	586,823	564,431	0	412	22,392	24	44.0	19.0
CA50	595,683	573,463	0	411	22,220	25	14.3	41.0
AZ02	632,709	610,871	0	410	21,838	26	6.6	50.9
CA26	593,237	571,523	0	409	21,714	27	6.0	53.5
NM03	526,275	504,919	0	408	21,356	28	1.1	34.5
LA02	623,656	602,877	0	407	20,779	29	60.9	3.7
CA31	593,407	572,643	0	406	20,764	30	1.5	59.3
MD07	618,430	597,700	0	405	20,730	31	71.3	.9
TX28	586,931	566,217	0	404	20,714	32	8.3	61.1
MD04	618,158	597,690	0	403	20,468	33	58.2	6.6
CA46	591,800	571,380	0	402	20,420	34	2.3	50.9
GA05	609,762	589,359	0	401	20,403	35	62.4	2.0
TX25	584,954	564,724	0	400	20,230	36	22.8	19.4
TX10	586,262	566,217	0	399	20,045	37	10.9	22.3

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ADJUSTED AND UNADJUSTED 1990 POPULATION

Sorted by Net Undercount

9/29/98

DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
TX27	586,242	566,217	0	398	20,025	38	2.3	66.9
NJ13	614,154	594,630	0	397	19,524	39	11.9	42.6
CA08	592,750	573,247	0	396	19,503	40	12.9	15.9
MI01	818,348	799,065	0	395	19,283	41	.3	1.6
CA17	590,103	570,981	0	394	19,122	42	4.1	32.4
VA03	581,288	562,351	0	393	18,937	43	64.6	1.5
TX24	586,271	567,454	0	392	18,817	44	20.2	21.8
IL07	590,163	571,530	0	391	18,633	45	65.9	4.3
FL23	580,895	562,519	0	390	18,376	46	50.8	9.7
CA18	589,760	571,393	0	389	18,367	47	2.7	26.6
MA08	619,596	601,643	0	388	17,953	48	22.8	11.0
NY06	598,065	580,337	0	387	17,728	49	54.1	17.2
CA42	589,344	571,844	0	386	17,500	50	11.3	34.8
CA38	590,143	572,657	0	385	17,486	51	8.0	26.2
CA34	590,200	573,047	0	384	17,153	52	1.8	63.1
CA16	588,428	571,551	0	383	16,877	53	5.1	37.6
CA11	588,595	571,772	0	382	16,823	54	5.6	21.7
CA22	589,656	572,891	0	381	16,765	55	2.4	21.8
SC06	597,686	581,117	0	380	16,569	56	62.6	.6
WA04	557,279	540,744	0	379	16,535	57	.9	16.6
GA04	605,773	589,322	0	378	16,451	58	37.0	3.3
TX23	582,668	566,217	0	377	16,451	59	2.8	63.0
IN09	558,412	541,981	0	376	16,431	60	59.8	.7
CA05	589,853	573,684	0	375	16,169	61	13.2	15.0
CA19	589,185	573,043	0	374	16,142	62	3.3	24.3
AL07	593,350	577,227	0	373	16,123	63	67.9	.3
TX07	580,890	564,900	0	372	15,990	64	6.0	17.3
MI15	596,872	580,956	0	371	15,916	65	70.2	4.2
FL03	578,263	562,519	0	370	15,744	66	47.1	3.6
NM02	520,246	504,659	0	369	15,587	67	2.0	42.5
CO01	564,649	549,068	0	368	15,581	68	13.2	22.3
IL04	586,926	571,530	0	367	15,396	69	5.6	65.4
CA44	586,546	571,583	0	366	14,963	70	5.0	28.8
PA02	580,582	565,650	0	365	14,932	71	62.8	1.6
CA03	586,241	571,374	0	364	14,867	72	3.2	14.7
TX12	580,967	566,217	0	363	14,750	73	8.0	16.9
NC12	566,408	551,722	0	362	14,686	74	56.9	.9

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ADJUSTED AND UNADJUSTED 1990 POPULATION

Sorted by Net Undercount

9/29/98

DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
MS02	529,302	514,646	0	361	14,656	75	63.2	.5
PA01	580,780	566,155	0	360	14,625	76	52.6	10.0
CA27	587,185	572,594	0	359	14,591	77	8.3	21.1
TX05	581,999	567,457	0	358	14,542	78	15.7	15.1
IL01	586,004	571,530	0	357	14,474	79	69.9	3.5
CA01	587,539	573,082	0	356	14,457	80	3.7	11.6
NV02	615,333	600,876	0	355	14,457	81	2.6	8.8
CA21	585,754	571,300	0	354	14,454	82	4.1	20.8
NV01	615,376	600,957	0	353	14,419	83	10.9	12.5
CA49	587,742	573,362	0	352	14,380	84	5.3	13.0
LA06	617,106	602,774	0	351	14,332	85	32.2	1.4
FL11	576,691	562,519	0	350	14,172	86	17.1	14.3
CA07	586,942	572,773	0	349	14,169	87	17.1	13.5
NC01	566,831	552,752	0	348	14,079	88	57.6	.8
CA23	585,550	571,483	0	347	14,067	89	2.5	30.8
TX14	580,255	566,217	0	346	14,038	90	10.4	24.3
UT03	588,259	574,250	0	345	14,009	91	.4	5.3
GA02	601,516	587,583	0	344	13,933	92	39.4	1.8
LA04	616,704	602,802	0	343	13,902	93	32.9	1.8
CO03	562,686	549,062	0	342	13,624	94	.6	17.8
TX22	581,767	568,160	0	341	13,607	95	12.6	17.5
MI14	594,541	580,958	0	340	13,585	96	69.4	1.0
CA29	585,150	571,566	0	339	13,584	97	3.5	13.5
CO04	562,645	549,070	0	338	13,575	98	.7	15.2
CA41	586,124	572,663	0	337	13,461	99	6.7	32.2
VA02	575,732	562,276	0	336	13,456	100	16.7	3.4
TX03	581,064	567,648	0	335	13,416	101	7.5	8.7
CA40	587,025	573,625	0	334	13,400	102	5.4	16.4
GA10	601,445	588,046	0	333	13,399	103	38.0	1.1
CA02	586,630	573,322	0	332	13,308	104	1.5	6.2
CA43	584,383	571,231	0	331	13,152	105	5.9	25.6
TX13	579,296	566,217	0	330	13,079	106	7.9	20.0
TX26	577,836	564,843	0	329	12,993	107	5.4	10.0
VA08	575,390	562,484	0	328	12,906	108	13.4	9.2
CA52	586,053	573,203	0	327	12,850	109	3.1	23.2
TX11	579,043	566,217	0	326	12,826	110	15.7	12.7
TX19	579,010	566,217	0	325	12,793	111	2.5	20.1

ADJUSTED AND UNADJUSTED 1990 POPULATION

Sorted by Net Undercount

DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
OR02	581,233	568,464	0	324	12,769	112	.3	5.6
SC01	593,736	581,127	0	323	12,609	113	20.4	1.4
GA01	601,099	588,541	0	322	12,558	114	30.7	1.8
WI05	556,077	543,530	0	321	12,547	115	35.8	2.7
CA14	583,559	571,131	0	320	12,428	116	5.0	13.9
AZ01	623,294	610,872	0	319	12,422	117	3.3	13.5
NC04	564,797	552,387	0	318	12,410	118	20.4	1.4
TX08	577,493	565,090	0	317	12,403	119	5.1	7.4
WA07	553,133	540,747	0	316	12,386	120	10.4	3.6
OH11	583,170	570,901	0	315	12,269	121	59.0	1.1
IL02	583,754	571,530	0	314	12,224	122	68.6	6.6
DE01	678,385	666,168	0	313	12,217	123	17.0	2.5
ID02	515,422	503,362	0	312	12,060	124	.4	6.2
MS04	525,604	513,619	0	311	11,985	125	41.4	.4
FL08	574,491	562,518	0	310	11,973	126	5.0	11.8
OR04	580,374	568,465	0	309	11,909	127	.5	2.4
SC02	592,986	581,099	0	308	11,887	128	25.4	1.5
AL01	589,097	577,226	0	307	11,871	129	28.9	.8
CA13	584,298	572,441	0	306	11,857	130	7.6	18.8
GA08	599,705	587,912	0	305	11,793	131	31.3	1.0
VA11	574,290	562,497	0	304	11,793	132	8.2	7.8
TN05	553,694	541,910	0	303	11,784	133	23.2	.9
CA48	584,685	572,928	0	302	11,757	134	4.1	17.8
LA05	614,660	602,933	0	301	11,727	135	31.3	.9
GA03	601,335	589,630	0	300	11,705	136	24.9	1.8
VA04	574,101	562,466	0	299	11,635	137	32.4	1.2
NM01	517,058	505,491	0	298	11,567	138	2.5	38.7
CA36	585,215	573,663	0	297	11,552	139	3.3	15.3
MD05	609,233	597,681	0	296	11,552	140	18.7	2.5
SC05	592,665	581,131	0	295	11,534	141	31.2	.6
TX09	575,738	564,322	0	294	11,416	142	21.7	9.6
LA03	614,223	602,839	0	293	11,384	143	23.8	2.3
AR02	598,792	587,412	0	292	11,380	144	18.0	.8
LA07	614,277	602,906	0	291	11,371	145	24.0	1.2
OR05	579,824	568,466	0	290	11,358	146	.6	5.2
TX21	577,568	566,217	0	289	11,351	147	2.4	14.6
KY06	626,250	614,901	0	288	11,349	148	8.1	.7

ADJUSTED AND UNADJUSTED 1990 POPULATION

Sorted by Net Undercount

DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
NY07	591,660	580,337	0	287	11,323	149	9.3	22.1
AR01	599,907	588,588	0	286	11,319	150	18.1	.7
MS03	526,465	515,206	0	285	11,259	151	31.7	.6
AK01	561,276	550,043	0	284	11,233	152	4.0	3.3
AZ05	622,043	610,871	0	283	11,172	153	3.0	16.9
MD03	608,820	597,666	0	282	11,154	154	17.8	1.8
MO01	579,420	568,285	0	281	11,135	155	52.9	.9
NC03	563,516	552,387	0	280	11,129	156	21.6	1.7
KY03	624,924	613,805	0	279	11,119	157	18.7	.7
HI02	565,198	554,110	0	278	11,088	158	2.4	9.4
TX17	577,285	566,217	0	277	11,068	159	3.5	17.6
TX06	576,518	565,469	0	276	11,049	160	5.1	6.0
CA45	581,918	570,874	0	275	11,044	161	1.3	15.3
CA06	582,176	571,227	0	274	10,949	162	2.3	9.3
WA06	551,668	540,742	0	273	10,926	163	5.5	3.2
GA11	600,310	589,398	0	272	10,912	164	11.9	1.3
FL02	573,352	562,518	0	271	10,834	165	24.2	2.0
VA01	573,576	562,757	0	270	10,819	166	17.8	1.6
CA28	583,743	572,927	0	269	10,816	167	5.8	24.6
VA05	573,068	562,268	0	268	10,800	168	25.0	.6
GA07	600,203	589,405	0	267	10,798	169	13.4	1.2
OK06	535,012	524,264	0	266	10,748	170	13.3	4.6
CA39	584,274	573,574	0	265	10,700	171	2.7	23.4
NC02	562,715	552,020	0	264	10,695	172	22.1	1.3
NC07	563,057	552,386	0	263	10,671	173	18.7	3.0
AZ03	621,538	610,871	0	262	10,667	174	2.0	12.2
LA01	613,459	602,842	0	261	10,617	175	12.3	4.5
TX01	576,816	566,217	0	260	10,599	176	18.2	3.4
GA06	600,152	589,600	0	259	10,552	177	6.5	2.2
MD01	608,202	597,678	0	258	10,524	178	15.2	1.2
FL01	572,993	562,518	0	257	10,475	179	13.0	2.1
ID01	513,861	503,387	0	256	10,474	180	.2	4.8
KY05	635,284	624,837	0	255	10,447	181	1.0	.3
SC03	591,563	581,116	0	254	10,447	182	21.4	.6
WA02	551,008	540,739	0	253	10,269	183	.9	3.1
AR04	595,428	585,202	0	252	10,226	184	26.9	.9
FL12	572,692	562,519	0	251	10,173	185	12.6	6.5

ADJUSTED AND UNADJUSTED 1990 POPULATION
Sorted by Net Undercount

DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
OK04	534,421	524,265	0	250	10,156	186	7.2	4.1
NY08	590,478	580,337	0	249	10,141	187	7.7	13.3
AL03	587,385	577,227	0	248	10,138	188	26.2	.6
WA09	550,878	540,744	0	247	10,134	189	5.7	3.8
AL02	587,360	577,227	0	246	10,133	190	24.4	.9
NC08	562,515	552,387	0	245	10,128	191	23.4	1.5
TX02	576,305	566,217	0	244	10,088	192	16.7	5.8
WY01	463,629	453,588	0	243	10,041	193	.8	5.8
TX04	576,235	566,217	0	242	10,018	194	8.4	4.5
OK01	534,226	524,264	0	241	9,962	195	9.7	2.5
GA09	599,341	589,420	0	240	9,921	196	3.7	1.8
IN10	564,326	554,418	0	239	9,908	197	30.3	1.2
HI01	563,972	554,119	0	238	9,853	198	2.6	5.7
WA05	550,562	540,744	0	237	9,818	199	1.2	3.5
SC04	590,911	581,113	0	236	9,798	200	19.9	.8
TN08	551,683	541,907	0	235	9,776	201	19.9	.7
IL09	581,268	571,530	0	234	9,738	202	12.1	10.0
KY02	624,290	614,592	0	233	9,698	203	5.5	.9
VA10	572,283	562,664	0	232	9,619	204	5.8	2.3
MD08	607,237	597,682	0	231	9,555	205	8.2	6.6
OK05	533,799	524,264	0	230	9,535	206	5.7	3.4
MS01	524,539	515,039	0	229	9,500	207	23.0	.5
CO05	558,565	549,066	0	228	9,499	208	5.8	7.6
CA25	582,600	573,105	0	227	9,495	209	4.3	16.8
UT01	583,777	574,286	0	226	9,491	210	1.0	4.8
OH01	580,305	570,900	0	225	9,405	211	30.7	.6
CO02	558,462	549,072	0	224	9,390	212	.8	9.7
OR03	577,799	568,465	0	223	9,334	213	6.2	3.3
WA03	550,061	540,745	0	222	9,316	214	.9	2.6
NC05	561,683	552,386	0	221	9,297	215	15.3	.8
CA12	580,777	571,535	0	220	9,242	216	4.2	14.7
WV03	606,688	597,500	0	219	9,188	217	4.5	.5
CA15	581,666	572,485	0	218	9,181	218	2.3	11.1
KY04	611,989	602,896	0	217	9,093	219	2.2	.5
FL20	571,584	562,518	0	216	9,066	220	4.2	12.8
NC09	561,955	552,902	0	215	9,053	221	9.2	1.1
KY01	623,307	614,265	0	214	9,042	222	7.9	.8

ADJUSTED AND UNADJUSTED 1990 POPULATION

Sorted by Net Undercount

DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
FL04	571,478	562,519	0	213	8,959	223	6.5	2.8
AR03	598,469	589,523	0	212	8,946	224	1.6	1.2
TN07	550,880	541,937	0	211	8,943	225	12.5	1.2
CA04	579,968	571,033	0	210	8,935	226	1.7	7.7
MS05	523,638	514,706	0	209	8,932	227	20.2	1.1
VA09	571,235	562,380	0	208	8,855	228	2.5	.5
AL05	586,079	577,227	0	207	8,852	229	15.0	.8
VA07	571,490	562,643	0	206	8,847	230	10.2	1.1
VA08	571,383	562,572	0	205	8,811	231	11.6	.7
OR01	577,242	568,461	0	204	8,781	232	.8	4.2
FL06	571,253	562,518	0	203	8,735	233	11.0	3.0
AL06	585,954	577,226	0	202	8,728	234	9.4	.6
MD06	606,312	597,688	0	201	8,624	235	4.5	1.0
TN03	550,443	541,866	0	200	8,577	236	11.8	.6
FL07	571,090	562,518	0	199	8,572	237	3.9	5.7
OK03	532,797	524,264	0	198	8,533	238	4.1	1.5
TN02	550,372	541,864	0	197	8,508	239	6.8	.6
WV02	606,421	597,921	0	196	8,500	240	3.4	.5
CA51	581,474	572,982	0	195	8,492	241	1.8	14.1
CA24	581,019	572,563	0	194	8,456	242	2.1	14.0
OK02	532,708	524,264	0	193	8,444	243	5.1	1.2
NC11	560,776	552,387	0	192	8,389	244	7.3	.7
CA47	579,900	571,518	0	191	8,382	245	1.9	13.5
MD02	606,060	597,683	0	190	8,377	246	6.0	1.3
FL15	570,783	562,519	0	189	8,264	247	7.6	3.6
TN06	550,237	541,977	0	188	8,260	248	5.8	.8
OH12	579,114	570,902	0	187	8,212	249	23.7	.9
WV01	606,254	598,056	0	186	8,198	250	1.8	.5
FL16	570,599	562,519	0	185	8,080	251	4.0	6.6
FL14	570,434	562,518	0	184	7,916	252	5.4	6.9
NC06	560,445	552,535	0	183	7,910	253	7.8	.7
FL05	570,427	562,518	0	182	7,909	254	8.5	2.8
AZ04	618,601	610,871	0	181	7,730	255	2.0	8.0
TN04	549,579	541,868	0	180	7,711	256	3.7	.5
CO06	556,630	549,056	0	179	7,574	257	3.7	6.6
NC10	559,869	552,386	0	178	7,483	258	5.5	.8
NY26	587,769	580,338	0	177	7,431	259	5.5	4.5

ADJUSTED AND UNADJUSTED 1990 POPULATION
Sorted by Net Undercount

DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
AL04	584,605	577,227	0	176	7,378	260	6.7	.4
NY14	587,645	580,337	0	175	7,308	261	4.1	11.5
MO05	576,250	569,130	0	174	7,120	262	24.1	3.1
TN01	546,961	541,875	0	173	7,086	263	1.9	.4
SD01	702,864	696,004	0	172	6,860	264	.5	.8
UT02	581,152	574,314	0	171	6,838	265	.6	5.1
MN05	553,659	546,887	0	170	6,772	266	9.7	1.8
FL09	569,115	562,518	0	169	6,597	267	3.5	4.2
NY24	586,855	580,338	0	168	6,517	268	2.4	1.7
OH03	577,352	570,901	0	167	6,451	269	18.2	.8
VT01	569,100	562,758	0	166	6,342	270	.3	.7
FL13	568,830	562,518	0	165	6,312	271	5.5	4.6
CA10	578,266	572,008	0	164	6,258	272	2.4	9.0
WA01	546,939	540,745	0	163	6,194	273	1.4	2.4
FL19	568,684	562,519	0	162	6,165	274	2.6	6.5
OH15	577,045	570,902	0	161	6,143	275	5.0	1.0
WA08	546,792	540,742	0	160	6,050	276	1.7	2.4
IL05	577,494	571,530	0	159	5,964	277	1.4	13.5
FL10	568,446	562,518	0	158	5,928	278	9.6	2.4
FL22	568,304	562,519	0	157	5,785	279	2.7	13.5
MI09	586,715	580,956	0	156	5,757	280	18.1	2.8
IL12	577,038	571,517	0	155	5,521	281	17.4	1.3
OH09	576,227	570,901	0	154	5,320	282	17.4	3.4
NY31	585,657	580,337	0	153	5,320	283	2.2	1.5
NJ02	599,941	594,630	0	152	5,311	284	13.9	6.9
NJ08	599,903	594,629	0	151	5,274	285	12.2	18.6
KS03	624,666	619,439	0	150	5,247	286	9.1	3.3
CT02	553,269	548,030	0	149	5,239	287	3.7	3.1
MA01	606,876	601,643	0	148	5,233	288	1.6	5.1
CT04	552,984	547,765	0	147	5,219	289	13.0	11.6
NE02	531,712	526,567	0	146	5,145	290	9.9	2.8
MI13	586,100	580,956	0	145	5,144	291	11.2	1.8
IN01	559,436	554,416	0	144	5,020	292	21.3	8.5
PA05	570,773	565,813	0	143	4,960	293	.9	.6
OH14	575,772	570,900	0	142	4,872	294	11.2	.6
NY23	585,198	580,337	0	141	4,861	295	2.7	1.6
MN04	551,699	546,887	0	140	4,812	296	4.3	2.9

ADJUSTED AND UNADJUSTED 1990 POPULATION

Sorted by Net Undercount

DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
NH01	559,065	554,257	0	139	4,808	297	.7	1.1
KS04	624,126	619,374	0	138	4,752	298	6.7	3.8
ME02	618,695	613,967	0	137	4,728	299	.4	.5
NH02	559,567	554,995	0	136	4,572	300	.5	1.1
CT01	552,569	548,027	0	135	4,542	301	14.1	10.6
ME01	618,435	613,961	0	134	4,474	302	.4	.6
IL15	575,885	571,530	0	133	4,355	303	7.6	1.7
ND01	643,033	638,800	0	132	4,233	304	.6	.8
PA16	570,166	565,947	0	131	4,219	305	5.2	4.1
MI08	585,163	580,954	0	130	4,209	306	6.0	3.0
IL14	575,672	571,530	0	129	4,142	307	4.1	10.1
KS02	623,465	619,391	0	128	4,074	308	6.3	3.1
WI04	547,592	543,527	0	127	4,065	309	.8	6.5
NY22	584,378	580,337	0	126	4,041	310	2.0	1.6
PA12	569,733	565,794	0	125	3,939	311	1.3	.4
PA09	569,638	565,803	0	124	3,835	312	1.2	.5
MI03	584,783	580,956	0	123	3,807	313	7.6	2.8
MA05	605,371	601,643	0	122	3,728	314	1.7	8.6
PA21	569,360	565,802	0	121	3,558	315	3.9	.8
MI09	584,496	580,956	0	120	3,540	316	9.7	1.9
IA01	558,644	555,229	0	119	3,415	317	2.7	2.1
KS01	622,737	619,370	0	118	3,367	318	1.3	5.4
IL10	574,888	571,530	0	117	3,358	319	6.2	7.2
WI02	546,874	543,532	0	116	3,342	320	2.1	1.3
OH10	574,236	570,903	0	115	3,333	321	2.1	4.1
PA19	568,819	565,779	0	114	3,040	322	2.6	1.4
PA06	568,888	565,874	0	113	3,014	323	2.3	3.5
IA04	558,279	555,276	0	112	3,003	324	2.8	1.5
WI01	546,432	543,530	0	111	2,902	325	5.5	3.6
PA17	568,527	565,682	0	110	2,845	326	6.9	2.0
IL08	574,343	571,530	0	109	2,813	327	1.7	5.6
NE01	529,100	526,297	0	108	2,803	328	1.1	1.4
IL11	574,193	571,543	0	107	2,650	329	8.7	6.5
OH17	573,539	570,900	0	106	2,639	330	10.0	1.4
CT06	550,355	547,765	0	105	2,590	331	2.2	3.7
MN03	549,427	546,888	0	104	2,539	332	1.8	.9
IL17	574,037	571,530	0	103	2,507	333	3.3	3.1

ADJUSTED AND UNADJUSTED 1990 POPULATION

Sorted by Net Undercount

DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
MA04	604,082	601,642	0	102	2,440	334	2.1	2.6
MI05	583,363	580,956	0	101	2,407	335	8.5	3.5
NE03	527,900	525,521	0	100	2,379	336	.2	3.0
IL16	573,877	571,530	0	99	2,347	337	4.8	3.2
IN03	556,730	554,416	0	98	2,314	338	7.5	2.0
NY30	582,641	580,337	0	97	2,304	339	17.5	1.6
NY26	582,630	580,337	0	96	2,293	340	14.5	4.4
MO03	570,592	568,328	0	95	2,266	341	2.5	1.2
MO02	570,519	568,306	0	94	2,213	342	3.8	1.0
IL06	573,736	571,530	0	93	2,206	343	1.5	5.3
MO06	571,331	569,131	0	92	2,200	344	2.1	1.5
OH07	573,087	570,902	0	91	2,185	345	5.4	.7
NY18	582,489	580,337	0	90	2,152	346	7.4	10.9
IN07	556,495	554,416	0	89	2,079	347	2.0	.9
IL18	573,606	571,530	0	88	2,076	348	5.3	1.0
MO09	570,416	568,347	0	87	2,069	349	3.8	.8
WI08	545,442	543,378	0	86	2,064	350	.3	.7
MA02	603,655	601,642	0	85	2,013	351	5.7	6.3
MI07	582,917	580,957	0	84	1,960	352	5.7	2.5
OH02	572,858	570,902	0	83	1,956	353	2.3	.5
IA03	557,219	555,299	0	82	1,920	354	1.0	.8
WI03	545,453	543,533	0	81	1,920	355	.2	.5
CT03	549,681	547,765	0	80	1,916	356	12.3	5.2
IL13	573,424	571,531	0	79	1,893	357	3.2	3.0
NY19	582,228	580,337	0	78	1,891	358	7.1	5.4
NY27	582,213	580,337	0	77	1,876	359	2.5	1.3
OH08	572,772	570,901	0	76	1,871	360	2.8	.5
OH16	572,727	570,902	0	75	1,825	361	4.9	.7
MI02	582,772	580,956	0	74	1,816	362	4.4	3.2
IA02	557,259	555,494	0	73	1,765	363	1.8	.7
MN07	548,634	546,887	0	72	1,747	364	.2	.8
MO08	570,125	568,385	0	71	1,740	365	4.5	.5
OH13	572,628	570,894	0	70	1,734	366	4.6	3.0
CT05	549,485	547,764	0	69	1,721	367	4.7	6.5
NY25	582,049	580,337	0	68	1,712	368	6.9	1.4
IN06	556,093	554,414	0	67	1,679	369	1.1	.8
IN08	556,073	554,416	0	66	1,657	370	3.1	.6

ADJUSTED AND UNADJUSTED 1990 POPULATION

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DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
PA14	567,436	565,787	0	65	1,649	371	18.7	.8
MI12	582,601	580,956	0	64	1,645	372	3.8	1.2
IN02	556,038	554,416	0	63	1,622	373	4.2	.6
MI16	582,569	580,956	0	62	1,613	374	1.4	2.4
MO04	570,758	569,146	0	61	1,612	375	3.2	1.1
OH06	572,511	570,901	0	60	1,610	376	2.1	.4
IN04	556,014	554,416	0	59	1,598	377	5.6	1.6
NJ09	596,204	594,630	0	58	1,574	378	6.3	12.0
MO07	569,563	568,017	0	57	1,546	379	.9	.8
OH04	572,412	570,901	0	56	1,511	380	4.7	1.0
OH05	572,378	570,901	0	55	1,477	381	2.1	3.2
IA05	556,931	555,457	0	54	1,474	382	.6	1.0
IL20	572,949	571,530	0	53	1,419	383	4.3	.7
NJ06	596,037	594,630	0	52	1,407	384	11.4	6.4
MN06	548,257	546,887	0	51	1,370	385	.9	1.1
NY21	581,706	580,337	0	50	1,369	386	6.5	2.2
IN05	555,710	554,415	0	49	1,295	387	2.2	1.4
MI04	582,224	580,956	0	48	1,268	388	1.1	1.8
WI07	544,794	543,529	0	47	1,265	389	.2	.5
MI10	582,202	580,956	0	46	1,246	390	2.1	1.3
MN01	548,100	546,887	0	45	1,213	391	.3	1.0
NY20	581,536	580,338	0	44	1,198	392	7.9	6.3
IL19	572,689	571,530	0	43	1,159	393	4.0	.5
PA10	567,193	566,073	0	42	1,120	394	1.1	.8
OH19	571,978	570,901	0	41	1,077	395	1.8	.9
MI11	582,029	580,956	0	40	1,073	396	4.2	1.3
WI09	544,571	543,532	0	39	1,039	397	.4	1.1
MI01	581,981	580,956	0	38	1,025	398	.8	.6
WI06	544,636	543,678	0	37	958	399	.4	.9
MA03	602,525	601,642	0	36	883	400	1.8	4.0
IL03	572,373	571,531	0	35	842	401	2.0	7.3
OH18	571,630	570,900	0	34	730	402	2.4	.4
IN09	555,142	554,416	0	33	726	403	1.8	.5
RI02	502,506	501,787	0	32	719	404	4.0	5.6
NY09	581,008	580,338	0	31	670	405	3.1	8.9
NJ01	595,294	594,630	0	30	664	406	15.9	6.5
RI01	502,309	501,677	0	29	632	407	3.2	4.0

ADJUSTED AND UNADJUSTED 1990 POPULATION

Sorted by Net Undercount

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DISTRICT	ADJUSTED POPULATION	UNADJUSTED POPULATION	NET OVERCOUNT NUMBER	NET OVERCOUNT RANK	NET UNDERCOUNT NUMBER	NET UNDERCOUNT RANK	% AFRICAN AMERICAN	% HISPANIC
MN02	547,504	546,888	0	28	616	408	.1	1.0
MA09	602,154	601,643	0	27	511	409	6.5	4.9
MN08	547,330	546,888	0	26	442	410	.4	.5
MA10	602,074	601,642	0	25	432	411	2.0	1.5
NY13	580,612	580,337	0	24	275	412	5.5	7.8
NJ04	594,891	594,630	0	23	261	413	12.7	5.5
NY29	580,076	580,337	261	22	0	414	4.6	2.9
PA20	565,419	565,815	396	21	0	415	3.3	.5
PA11	565,068	565,521	453	20	0	416	.9	.8
NJ12	593,833	594,630	797	19	0	417	5.3	2.8
PA15	564,618	565,810	1,192	18	0	418	2.1	5.0
NY04	578,854	580,338	1,484	17	0	419	16.2	7.9
MA06	599,631	601,619	1,988	16	0	420	1.6	3.1
NY05	578,144	580,337	2,193	15	0	421	3.4	7.7
PA04	563,409	565,792	2,383	14	0	422	3.3	.5
MA07	599,260	601,666	2,406	13	0	423	2.3	3.2
NJ07	592,068	594,629	2,561	12	0	424	10.4	5.2
NY02	577,405	580,337	2,932	11	0	425	9.5	10.1
NY01	577,087	580,338	3,251	10	0	426	4.1	4.9
NJ03	591,345	594,630	3,285	9	0	427	8.1	2.7
PA08	562,330	565,787	3,457	8	0	428	2.9	1.7
NJ11	590,569	594,630	4,061	7	0	429	2.7	4.3
NJ05	590,357	594,630	4,273	6	0	430	1.3	2.9
PA13	561,326	565,679	4,353	5	0	431	6.3	1.3
PA03	560,946	565,553	4,607	4	0	432	4.9	4.9
PA18	561,158	565,781	4,623	3	0	433	8.2	.6
PA07	560,614	565,746	5,132	2	0	434	4.0	1.0
NY03	572,889	580,337	7,448	1	0	435	2.0	4.6